

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORRIS DAY, aka  
RICKEY LOUIS ALFORD,

Petitioner,

No. CIV S-05-0904 MCE DAD P

vs.

ESTHER BAXTER, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

Petitioner has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> On the face page of the form petition, petitioner indicates that the petition concerns a conviction, a sentence, and kidnaping and attempted murder over royalties. However, petitioner's claims are nonsensical and do not challenge either his conviction or any other action that relates to the length of his imprisonment. For example, petitioner describes his first claim as: "Esther Baxter model out of XXL magazine assisting in preventing media attention[.]" (Petition at 6.)

The court is required to examine a petition for federal habeas corpus relief before

<sup>1</sup> Petitioner failed to file an application requesting leave to proceed in forma pauperis.

1 requiring a response to it. See Rules 3 & 4, Rules Governing § 2254 Cases. “If it plainly appears  
 2 from the face of the petition . . . that the petitioner is not entitled to relief in the district court, the  
 3 judge shall make an order for its summary dismissal . . . .” Rule 4, Rules Governing § 2254  
 4 Cases. Rule 4 “‘explicitly allows a district court to dismiss summarily the petition on the merits  
 5 when no claim for relief is stated.’” O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990)  
 6 (quoting Gutierrez v. Griggs, 695 F.2d 1195, 1198 (9th Cir. 1983)). Here, petitioner is not  
 7 challenging the fact or duration of his confinement; therefore, no habeas relief is appropriate in  
 8 this action. See Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th  
 9 Cir. 1990).

10 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's application for a  
 11 writ of habeas corpus be summarily dismissed.

12 These findings and recommendations are submitted to the United States District  
 13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
 14 days after being served with these findings and recommendations, petitioner may file written  
 15 objections with the court. The document should be captioned “Objections to Magistrate Judge's  
 16 Findings and Recommendations.” Petitioner is advised that failure to file objections within the  
 17 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
 18 F.2d 1153 (9th Cir. 1991).

19 DATED: May 25, 2005.

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 22 DALE A. DROZD  
 23 UNITED STATES MAGISTRATE JUDGE

24 DAD:4  
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